

# **EXHIBIT 3**

U.S. DEPARTMENT OF COMMERCE - Patent and Trademark Office

IN REPLY REFER TO THE FOLLOWING AND THE FILING DATE:

**SERIAL NO.** **APPLICANT**  
73/627482 CLM DESIGN, INC.

Paper No.

**MARK**

MISCELLANEOUS DESIGN

**ADDRESS**

GEORGE C. LOMBARDO  
WINSTON E. STRAWN  
SUITE 5000  
ONE FIRST NATIONAL PLAZA  
CHICAGO, ILLINOIS 60603

**ACTION NO.**

01

**MAILING DATE**

03/20/87

**ADDRESS:**  
Commissioner of  
Patents and  
Trademarks  
Washington, DC  
20231

The address of  
all correspondence  
not containing fee  
payments should  
include the word  
"Box 5."

FORM PTO-1525 (2-84)

U.S. DEPT. OF COMM. PAT. & TM OFFICE

Also furnish: (1) Serial number of application, (2) The mark, (3) Examining Attorney's name and Law Office number, (4) Mailing date of this action, and (5) Applicant's name (or applicant's attorney), telephone number and zip code.

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT.

I have reviewed this application for trademark (and/or service mark) registration and you are advised as follows:

Registration is refused on the Principal Register because the matter presented for registration constitutes a configuration of the goods and, as such, is merely descriptive of the goods. In the absence of evidence that it has a secondary meaning or has become distinctive, as applied to the goods, it may not be registered on the Principal Register.

Ordinary geometric shapes such as circles, squares, ovals, etc. are generally regarded as non-distinctive and protectable only upon proof of secondary meaning. See Re B & J Mfg. Co., 196 USPO 707 (TTAB, 1977) and American Can Co. v. Marcal Paper Mills Inc., 152 USPQ 772 (TTAB 1967).

Your application states that the mark is also used in connection with "packaging, promotional materials and labels." Please submit drawings and specimens of these uses of the mark, i.e. label(s) which are attached to the towel, a package or container in which the towel is sold (if any) and actual samples of advertisements or promotional materials for the towel.

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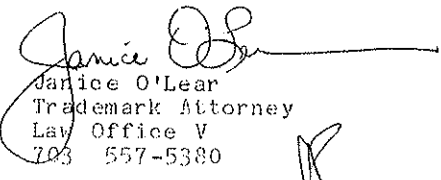
You must submit a concise description of the mark sought to be registered. (37 CFR Section 2.35; TMEP section 905.)

Applicant may submit the description of the mark in the following form:

The mark consists of ... a configuration of a round beach towel.

If applicant has submitted a patent application for the round towel configuration, please submit a copy of that application.

It is our practice to enforce Office policies to conclude examination of applications as quickly as possible. If you, in good faith, address each issue raised in this Office action but fail to resolve them satisfactorily, I will make the requirements related to any unresolved issue final in the next Office action. (See 37 CFR Section 2.64.) On the other hand, if you fail to address one or more of the issues raised in this Office action, I will be compelled to hold the application abandoned for failure to respond completely. (See 37 CFR Section 2.65.)

  
Janice O'Lear  
Trademark Attorney  
Law Office V  
703 557-5380

vaj/wr3